

FCC MAIL SECTION

DOCKET FILE COPY
ORIGINAL

JUN 12 2 42 PM 1992
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

FCC 92-238
38413

DISPATCHED BY

In Re Application of)	MM Docket No. 92-122
)	
)	
CALVARY EDUCATIONAL)	File No. BRH-891103UA
BROADCASTING NETWORK, INC.)	
)	
)	
For Renewal of License of)	
KOKS (FM), Poplar Bluff,)	
Missouri)	
)	

HEARING DESIGNATION ORDER

Adopted: May 29, 1992

Released: June 12, 1992

By the Commission:

1. The Commission has before it: (i) the captioned application for renewal of license filed by Calvary Educational Broadcasting Network, Inc., ("Calvary"), licensee of station KOKS (FM), Poplar Bluff, Missouri; (ii) petitions to deny filed by Mrs. Jean Hillis and Mrs. Doris Smith ("Hillis and Smith") on December 23, 1989, alleging numerous instances of blanketing interference complaints which were not satisfactorily resolved by KOKS, in violation of 47 C.F.R. § 73.318; (iii) the Mass Media Bureau's ("Bureau") October 30, 1990 Order that the station remedy the blanketing problem for certain complainants and advise others of possible ameliorative steps to reduce the interference; (iv) Calvary's February 25, 1991 compliance report; (v) Hillis and Smith's March 25, 1991 response to the report; (vi) a field investigation report from the Commission's Field Operations Bureau ("FOB"), dated February 21, 1992; and (vii) related filings.¹

2. Background. KOKS began broadcasting as a new noncommercial educational FM station pursuant to program test authority on September 29,

¹ These include Calvary's January 22, 1990 opposition, Hillis and Smith's February 6, 1990 reply, and numerous informal objections to the license renewal. In addition, more than 900 blanketing complaints have been lodged with the station and the Commission. The Commission has also received petitions signed by several hundred Poplar Bluff residents urging renewal of KOKS (FM)'s license and expressing interest in continued service from the station.

1988.² Soon after KOKS went on the air, residents of Poplar Bluff ("complainants"), including many who resided near the new KOKS tower, began complaining of interference to their television and radio receivers. The complaints were directed to the station and to the Commission's Kansas City field office. An investigation by the Commission's Field Operations Bureau subsequently revealed that KOKS was causing the interference through FM blanketing, a phenomenon whereby the strong signal from a nearby tower can completely overwhelm receivers in the FM and TV bands. KOKS thereafter was directed by the staff to resolve all blanketing complaints, as required under the Commission's blanketing rule, 47 C.F.R. § 73.318.³

3. After KOKS' failure to satisfactorily resolve many of the complaints, Hillis and Smith became the spokespersons for the community in this matter, and each filed a petition to deny KOKS's license renewal on Dec. 23, 1989. They subsequently mailed over 900 complaint petitions to the station and the Commission. In their petitions, Hillis and Smith detail the extent of interference, which spans the entire VHF TV and much of the FM band. Hillis and Smith also charge Calvary with misrepresenting the facts to the Commission concerning the nature and extent of the problem.

4. In its January 22, 1990 opposition, Calvary states, inter alia, that Hillis and Smith are outside the Grade B contour of station WPSD-TV, Paducah, Kentucky and thus "Calvary is not breaking any rules by interfering with their

² Construction permit BPED-870302MS was granted on October 30, 1987. The application for license to cover that permit, BLEP-880906KB, was granted on January 4, 1989.

³ The Report and Order which adopted the FM blanketing rule states that "FM blanketing occurs when an FM station's signal strength or signal power density is of such magnitude that it causes [FM and TV] receivers near the transmitting antenna to be partially or completely blocked from receiving other broadcast stations." FM Broadcast Station Blanketing Interference, FCC 84-514, 57 RR 2d 126 (1984) ("FM Blanketing"). Under 47 C.F.R. § 73.318(b), a new station causing FM blanketing "must satisfy all complaints of blanketing interference which are received by the station during a one year period" beginning with the commencement of program tests and which are received from complainants who reside within the station's 115 dBu blanketing contour. Additionally, pursuant to Section 318(d), the station must provide complainants filing after the one-year cutoff point, as well as complainants residing outside the blanketing contour, with "technical information or assistance" in solving the problem; the station owes no financial duty to these complainants. While "[m]obile receivers ... and high-gain antennas or antenna booster amplifiers" are excluded from the provisions of 47 C.F.R. Section 73.318, a station's duty to complainants residing within the 115 dBu contour, who filed timely complaints, is to repair all radio and television receivers. See 57 RR 2d at 130.

reception" of that station. Opposition, at 2.⁴ Furthermore, Calvary states that it "has never knowingly misrepresented facts concerning its broadcast service or its response to the investigation to the Commission. It has made errors, which it has attempted to correct when it discovered the errors or [when] they were pointed out to the station management," and "[f]or a non-profit licensee operations with a largely volunteer staff, Calvary has done its level best to resolve the interference complaints that it can." (emphasis in original) Opposition, at 3-4. Hillis and Smith's February 6 reply notes that the interference existed as to four television stations, not merely WPSD-TV,⁵ and reiterates that Calvary has misrepresented its success in resolving the interference complaints.

5. On April 27, 1990, the Bureau sent a letter to Calvary and to Hillis and Smith. This letter requested that the parties each locate and indicate the residences of 700 complainants on a provided topographic map of the Poplar Bluff vicinity. Letter to Don Stewart, Jean Hillis, and Doris Smith, reference 8920-BE (Chief, Audio Services Division, April 27, 1990). When the information was returned, the Bureau divided the list of names into three groups. Group "A" was composed of 220 residents who lived within the blanketing contour and complained within one year of the program test date, or by September 29, 1989. Group "B" consisted of complaining residents residing outside the blanketing contour who also lodged their complaints before September 29, 1989. Group "C" consisted of residents who filed a complaint after September 29, 1989, or who filed an undated complaint. After receiving 260 pages of additional complaints from Hillis and Smith, the Bureau sent a June 18, 1990 letter to the parties explaining several procedural matters, including the Commission's ex parte rules, providing KOKS(FM)'s counsel with copies of the additional complaints, and setting up a procedure for counsel to review the Commission's files on this case. Letter to Don Stewart, Jean Hillis, and Doris Smith, reference 8920-JKK (Chief, Audio Services Division, June 18, 1990).

6. On October 30, 1990, the Bureau again ordered Calvary to comply with the provisions of 47 C.F.R. § 73.318. Order in re Application of Calvary Educational Broadcasting Network, Inc. For Renewal of License of Station KOKS (FM), reference BRH-891103UA, (Chief, Audio Services Division, October 30, 1990) ("Order"). The Order stated that Calvary "shall satisfy all complaints of blanketing interference by persons listed in [Group] A attached hereto, within 120 days of the date of this letter. IT IS FURTHER ORDERED, that Calvary...shall provide all complainants listed in [Groups] B and C... with technical information and assistance in alleviating this blanketing

⁴ We note that the FM blanketing rule does not limit a licensee's responsibility to complainants residing within the Grade B contour of television stations.

⁵ The four stations identified by the complainants are: WPSD-TV, Channel 6, Paducah, Kentucky; KAIT-TV, Channel 8, Jonesboro, Arkansas; KFVS-TV, Channel 12, Cape Girardeau, Missouri, and KPOB-TV, Channel 15, Poplar Bluff, Missouri.

interference problem." Id. at 3.⁶

7. Calvary sent the Commission its final progress report on February 25, 1991.⁷ The KOKS reports detailed information about its efforts to contact Poplar Bluff residents about the blanketing problem, and recorded 105 home visits to install filters to remedy the interference problem.⁸ Hillis and

⁶ Id. at 4. The October Order also required that KOKS submit progress reports to the Commission every 30 days regarding this matter, and stated that Group B and C residents could be assisted through a "mass mailing containing relevant information" or establishing a telephone "hotline" to deal with questions.

⁷ Calvary filed three periodic reports regarding its efforts, as required by the Order. We will consider all of KOKS' submitted evidence as one "final report" package.

⁸ In its reports, Calvary states that it purchased 160 FM filter traps from Microwave Filter Company of Syracuse, New York ("MFC"), with the intent of fixing Televisions on the A list with these traps. The traps are simple, notched devices that are installed on the antenna to block the interfering FM signal. Calvary then sent letters to over 700 homes on the B and C lists and recommended the MFC trap or a similar trap to fix the blanketing problem. Calvary also sent letters to the 220 A list homes, asking A list residents whether they wanted a home visit at no charge to correct the blanketing problem. After sending a second letter to A list residents and following up with phone calls, Calvary identified 105 residents who requested home visits. Calvary made those home visits in January and February, 1991, installing one FM trap per household on one TV set per household. Calvary's final report contained a one page summary, plus work forms from the 105 homes visited, and typed notes regarding Calvary's efforts to contact all complainants. In the summary, KOKS stated that only three B list residents complained that the FM trap did not work, so "information was given on the telephone and also a letter was sent giving them information of a new filter and where this filter could be purchased." With regard to the A list complainants: "Calvary Educational Broadcasting Network (KOKS) FM has gone beyond what the FCC regulations say that we had to go by taking FM blanketing out of Channel 6 out of Paducah, KY. and in most cases restoring reception of Channel 6. This was all done at the expense of KOKS the average cost per home visit was \$65.00." Calvary's work forms, signed and notarized by the station engineer and in most cases signed by the resident, show the following:

- 105 homes visited;
- 90 homes, reception totally cleared up;
- 12 homes, reception improved;
- 3 homes, no improvement;

Of the 105 home visits, 15 residents refused to sign the work form. The reports conclude that, of the 115 A list residents not receiving a home visit:

- 6 people have moved out of the blanketing area;

Smith were given the opportunity to review Calvary's reports, and submitted a response dated March 25, 1991, which disputed Calvary's reports. Hillis and Smith's response includes 81 notarized statements from A list residents, including 65 residents who had a home visit, and 45 notarized statements from B list complainants. Each statement detailed that particular resident's level of dissatisfaction with Calvary's efforts to solve the blanketing problem.⁹

8. After a thorough review of the parties' arguments and data, the Bureau concluded that the wide disparity between the KOKS reports and the Hillis and Smith response required a second field investigation. This investigation, conducted by the FOB, involved: (i) inspection of the station, including its transmitter logs; and (ii) home visits to a selected, representative sample of 14 complainants -- those whose blanketing problems had been represented to be corrected by the station but which, according to the Hillis and Smith response, remain uncorrected -- to monitor and record their television reception with KOKS both on and off the air.¹⁰ The FOB report ("field report") dated February 21, 1992, contained the following findings: (i) none of the 14 homes visited had all reception problems addressed, as KOKS installed at most one notch filter per home and made no attempt to restore reception to radio or portable television receivers;¹¹ (ii) eight of the 14 homes showed marked improvement in signal quality when the station was off the air;¹² (iii) measurement of the output power using the direct and indirect methods (see 47 C.F.R. § 73.267)

14 people report no interference;
42 people declined the offer for a home visit;
53 people did not respond at all.

⁹ These residents stated, inter alia, that: (i) normal television and FM reception has not been restored; (ii) there is continuing dissatisfaction with reception and a lack of candor by KOKS in not reporting this fact; and (iii) none had more than one television or any FM radio serviced by KOKS.

¹⁰ Six of these fourteen came from the 90 homes in which KOKS claimed that the blanketing interference had been cleared up, see footnote 8, supra. Seven others came from prior correspondence in which the licensee claimed that the blanketing problems had been cured by installation of a filter. See KOKS correspondence dated February 10, 1989, February 24, 1989, and September 22, 1989. The fourteenth home visited was that of Mrs. Smith. A fifteenth selectee, Mike Pennington, was not visited by the FOB because he had moved since filing his complaint and no longer lived in the area.

¹¹ Calvary President Don Stewart stated that KOKS could not afford to install more than one filter at any one home, and that the station "would rather help a little at all of the homes than to limit assistance to just a few." FOB Field Report, at 4. Additionally, Mr. Stewart stated that he interpreted the reference to mobile receivers in the blanketing rule to include portable television sets.

¹² Of the six complainants whose signal was not affected by KOKS' being off the air, five had added filters or boosters at their own expense, and one had moved to a new residence.

gave two different results such that the station may have been operating at either 95% or 64% of authorized power;¹³ (iv) neither the station's engineer nor the station manager were aware of the discrepancy or knew the exact power with which KOKS was operating;¹⁴ (v) KOKS had been operating with a 7-bay directional antenna, rather than the 4-bay directional antenna currently authorized, since October of 1991, in violation of 47 C.F.R. § 73.1690(c);¹⁵ (vi) the KOKS tower is lit with a beacon at the top and half levels and side-lamps at the 1/4 and 3/4 height levels, and thus is not in accordance with its authorization, which requires a top beacon and side-lamps at the 1/3 and 2/3 height levels; and (vii) the KOKS public file does not contain the quarterly problems/programs lists and lists of donors supporting station programming, as required by 47 C.F.R. §§ 73.3527(a) (7) and (8).

9. The petitions to deny. Section 309(d) (1) of the Communications Act requires a two-step analysis for judging the sufficiency of a petition to deny. We must first determine whether the petition and its supporting affidavits contain specific allegations of fact sufficient to show that a grant of the application would be prima facie inconsistent with the public interest. 47 U.S.C. § 309(d) (1). In making this prima facie determination, we assume that the specific facts set forth by the complaining party are true without reference to contrary evidence, and we are limited to consideration of the petition and its supporting affidavits during this initial inquiry. Astroline Communications Co. v. FCC, 857 F.2d 1556, 1561 (D.C. Cir. 1988). Allegations within these documents that consist "of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits ... are not sufficient." Gencom, Inc. v. FCC, 832 F.2d 171, n.11 (D.C. Cir. 1987). If we determine that the petition satisfies the threshold standard, the inquiry proceeds to a second phase. The Commission must then determine whether, on the basis of the application, the pleadings filed, or other matters which it may officially notice, a substantial and material question of fact is presented. 47 U.S.C. § 309(d) (2). Should the Commission conclude that such a question of fact has been raised, or if it cannot, for any reason, find that grant of the application would be consistent with the public interest, it must conduct a hearing in accordance with 47 U.S.C. § 309(e). See 47 U.S.C. § 309(d) (2).

¹³ Operation at 64% of authorized power would minimize the blanketing problem during the field inspection and would violate the minimum transmitter output power requirements contained in 47 C.F.R. § 73.1560(b).

¹⁴ The field report suggests that this discrepancy in measured output power may have been occurring over a substantial period of time and that reasonable scrutiny of the station's transmitter logs by station personnel would have revealed the disparity.

¹⁵ Operation with a different directional antenna than that currently authorized could directly affect both the area and severity of blanketing interference. KOKS had earlier filed an application (BMLED-911009KD) seeking authorization to employ the 7-bay antenna, but installed and began operating with the 7-bay antenna without prior Commission approval. The application remains pending.

10. We have examined the petitions to deny and supporting affidavits filed by Hillis and Smith to determine if they have established that the renewal of KOKS's license would be prima facie inconsistent with the public interest. The factual allegations, supported by numerous affidavits of persons with personal knowledge of such facts, are that there remains a widespread blanketing interference problem caused by KOKS and that the station has misrepresented to the Commission the success of its efforts to remedy that problem. We conclude that Hillis and Smith have established a prima facie case. While the issue of blanketing interference in the context of license renewal has never previously been before the Commission, we have denied license renewal applications of stations for willful and repeated technical violations. Heart of the Black Hills Stations, 32 FCC 2d 196 (1971) (violations "included ... faulty tower lighting deficiencies, operation below authorized power, spurious emission [near an air traffic control frequency], [faulty] maintenance logs, and such serious deficiencies in the quality of picture transmission that they were virtually unviewable." Id. at 198). The Commission also has denied license renewal when technical violations have been combined with a misrepresentation or lack of candor. Nick J. Chaconas, 28 FCC 2d 231 (1971) (license renewal application denied for failure to perform transmission tests and subsequent falsification of transmission test logs), and Lewel Broadcasting, Inc., 86 FCC 2d 896 (1981) (license renewal application denied due to failure to satisfy station operator requirements, failing to maintain adequate program/maintenance logs, falsifying log entries).

11. Having found that the Hillis and Smith petitions satisfy the threshold requirement of Section 309(d)(1), we must next determine, from all the evidence before us, including the reports from Calvary, the response of Hillis and Smith, and the FOB field report, whether substantial and material questions of fact are presented. Our analysis will focus upon two major concerns: technical violations and related misrepresentations.

12. Blanketing violations. The October Order and the Commission's Rules clearly defined KOKS' obligations with respect to the continuing blanketing interference being caused by the station: the station was to restore service to the 220 "Group A" complainants listed in the attachment to the Order within 120 days at no cost to the complainants. The station made 105 home visits, explaining that the remainder of the complainants listed in Group A "either said no to a home visit or said they did not have any interference or that they moved and no longer lived in the area. Others did not answer the two different letters sent...." KOKS' Final Report, at p.1. It is clear from the Hillis and Smith response and from the FOB field report that a substantial and material question of fact remains as to whether reception at each of the 105 Group A residences visited by KOKS has been fully restored at the station's expense. The FOB inspection found that the station installed a trap or filter in but one television in each household visited; it did not attempt to restore service to other televisions and radios. The President of Calvary stated to our field investigators that the station could not afford more than one filter per household. It thus appears that KOKS knowingly chose to limit its actions in meeting the requirements of the rule. KOKS also stated to the FOB investigators that it believed that it could exclude "portable" televisions as "mobile receivers" under Section 73.318. We find KOKS' belief in this regard

to be unreasonable¹⁶ and, in any event, of no exculpatory value because ignorance of the Commission's rules and requirements cannot excuse noncompliance. Furthermore, as the FOB field report concluded, the station is still adversely affecting broadcast service to many of the Group A complainants, as evidenced by the on/off tests conducted. Some of the complainants, in frustration, took steps (such as installing filters, boosters, or satellite dishes) at their own expense to improve reception. We do not believe KOKS was relieved of its financial obligation to restore service simply because some affected residents subsequently took remedial measures on their own.¹⁷

13. Misrepresentation/lack of candor. In correspondence to the Commission dated January 24, 1989, February 10, 1989, and September 22, 1989, as well as in its periodic reports filed pursuant to the October Order, KOKS has repeatedly stated that the reception of various complainants had been restored. For example, in its progress report dated February 11, 1991, KOKS states that "the [trap filter] has in all cases taken FM blanketing out of all TV sets that it has been installed on and in most cases restored channel 6 from Paducah, Kentucky." This statement appears to be untrue, as the installation of a filter at the homes visited by the FOB field inspector did not cure the blanketing interference experienced by those residents. Many of the representations concerning specific complainants were disputed by Hillis and Smith in their petitions to deny and their response to KOKS' final compliance report. As indicated above, it was from this contested group that the list of 14 complainants was compiled for on-site inspections by the FOB. The FOB field report supports the allegations of Hillis and Smith. At the homes visited, the FOB field inspector found that KOKS either had not restored television service, or had attempted restoration on only one television set per household; further, it did not attempt to restore FM radio service at all. Field Report, at 4. The FOB report concludes that "[t]he licensee of radio station KOKS did not comply with the requirements contained in 47 C.F.R. § 73.318, in that [it] did not restore the quality of viewing each complainant enjoyed prior to the station commencing operations." Id. at 8. At no time prior to the above on-site inspection did KOKS inform the Commission of three crucial facts: that it was installing one filter per household irrespective of the number of television receivers contained therein, that it was not even attempting to restore FM radio reception, and that it had altogether excluded portable televisions from consideration. Thus, KOKS' representations that these

¹⁶ The "mobile receiver" exemption from the blanketing rule plainly does not apply to portable television sets. Rather, mobile receivers (such as car radios) are excluded due to their inherently transient nature. See FM Blanketing, 57 RR2d at 130; cf. WLKX, Inc., 6 FCC Rcd 225, 227 (1991). While the Commission "[does] not expect licensees to replace cheap, hand-held radios with expensive FM tuners, ... we decline to ... protect receivers of 'good design only.'" FM Blanketing, 57 RR 2d at 130.

¹⁷ For example, while Section 73.318(b) excludes interference caused to booster amplifiers, a broadcaster's preexisting obligation to correct a blanketing problem is not obviated by a complainant's subsequent attempt to improve its own reception by purchasing a booster amplifier.

complaints had been resolved appear to be false or less than forthright.

14. Moreover, as indicated, KOKS had made explicit representations dating back to 1989 that the blanketing interference problems of many complainants had been resolved and that their blanketing problems had been cleared up.¹⁸ Even accepting KOKS' erroneous view that reception need be restored to only one television set per household and that all portable receivers may be ignored, the FOB report strongly suggests that in at least 8 of the 14 homes visited, even the reception on the one television for which the blanketing interference had been assertedly cleared up by KOKS' efforts was not, in fact, restored.

15. As we stated in Nick J. Chaconas, 28 FCC 2d at 233:

The Commission's ability to fulfill its statutory responsibilities in the area of radio and television broadcasting rests in considerable measure on its being able to rely upon each of those whom it licenses to observe conscientiously the Rules of the Commission and the applicable license terms and conditions. It is, likewise, fundamental to the regulatory process that the Commission be able to rely on the representations of those whom it licenses and those who come before it seeking licenses. Therefore, the Commission must demand candor from those who come before it and must refuse to tolerate deliberate misrepresentations. WOKO, Inc., 329 U.S. 223 (1946); WMOZ, Inc., 36 FCC 202 (1964), aff'd 3 FCC 2d 637 (1966).

We believe that the evidence before us is sufficient to raise a substantial and material question of fact regarding the truthfulness of KOKS' representations concerning the success and extent of its efforts to restore broadcasting service to the affected Poplar Bluff residents. We will therefore designate the KOKS license renewal application for an evidentiary hearing on appropriate issues specified below.

16. Other rule violations. Because we have determined that a hearing on the merits of the KOKS license renewal application is necessary, we believe that consideration of other matters raised in the petition and FOB field report, which by themselves would not warrant designation, is appropriate. As pointed out in the field report: (i) a discrepancy of some 30% exists regarding the exact power with which the station is operating, which discrepancy was unknown to station management; (ii) the station has been operating since October with a new directional antenna without the required Commission authorization; (iii) the station's tower is not lit in accordance with its construction permit; and (iv) the station's public file fails to contain the required community issues/programs lists and list of donors supporting station programming.

17. In sum, it appears that the operation of station KOKS may have been "conducted in an exceedingly careless, inept, and negligent manner, and the

¹⁸ The actual language used in the KOKS home visit statements was that reception on the various television channels was "coming in fine."

licensee is either incapable of correcting or unwilling to correct" these operating deficiencies. Heart of the Black Hills Stations, 32 FCC 2d at 198. Appropriate issues concerning KOKS' inept operation will therefore be specified.

18. Accordingly, IT IS ORDERED that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e), the license renewal applicant IS DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Calvary Educational Broadcasting Network, Inc. violated Section 73.318 of Commission's Rules, 47 C.F.R. § 73.318 ("FM blanketing interference"), and, if so, the nature and extent of this violation;
2. To determine, whether Calvary has misrepresented facts or lacked candor in its statements to the Commission regarding the extent and success of its efforts to correct the blanketing interference problems;
3. To determine whether the licensee's management and operation of Station KOKS was so negligent, careless, or inept, or evidenced such disregard for the Commission's rules, that it cannot be relied upon to fulfill the responsibilities imposed upon it;
4. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject license renewal application would serve the public interest, convenience and necessity.

19. IT IS FURTHER ORDERED that the petitions to deny filed by Hillis and Smith ARE GRANTED to the extent indicated herein and ARE DENIED in all other respects.

20. IT IS FURTHER ORDERED that if it is determined that the hearing record does not warrant an Order denying the license renewal application of KOKS(FM), it shall also be determined if KOKS(FM) has willfully or repeatedly violated Sections 73.318 (FM Blanketing), 73.1015 (submitting truthful written statements and responses to the Commission), 73.267 (determining operating power), 73.1560 (operating power requirements), 73.1213 (tower lighting and painting), and 73.3527 (public file requirements) of the Commission's Rules. If so, it shall also be determined whether an Order for Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the amount of up to \$250,000 for the willful and repeated violation of the stated rules.

21. IT IS FURTHER ORDERED that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b) (3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of Section 503(b) of the

Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

22. IT IS FURTHER ORDERED that, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of the evidence upon issues (1), (2), (3), and (4), and the burden of proof with respect to all issues, shall be upon the licensee, Calvary Educational Broadcasting Network, Inc.

23. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicant shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

24. IT IS FURTHER ORDERED, That the applicant herein shall, pursuant to Section 311(a) (2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

25. IT IS FURTHER ORDERED that the Secretary send by Certified Mail-Return Receipt Requested, a copy of this Order to the applicant, to Jean Hillis, and to Doris Smith.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Donna R. Searcy *WZ*
Secretary